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JAMES H. McKE

Brief of Estes for P. C.

Filed Mar. 30, 1898.

IN THE

Supreme Court of the United States

October Term, 1897.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs. } No. 484.

LINDA Y. SPRATLEY.

Brief and Argument

For Plaintiff in Error in Resistance of the Motion of the Defendant to Dismiss, also the

Assignments of Error and Brief

For Plaintiff in Error on the Merits of the Case.

B. M. ESTES,

Solicitor for Plaintiff in Error.

E. C. TOOF & CO., PRS. AND LITHS., MEMPHIS.

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THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,

vs. } **No. 484.**

LINDA Y. SPRATLEY, Defendant in Error.

BRIEF AND ARGUMENT

For Plaintiff in Error in Resistance of the Motion to Dismiss and Affirm made by the Defendant in Error, and also the

ASSIGNMENTS OF ERROR AND BRIEF

For Plaintiff in Error on the Merits of the Case.

The plaintiff in error, by its writ of error in this case, seeks redress in this court against a judgment by default of a State court taken, as claimed, *without due process of law*, and the present expedient of adversary counsel by their motion to affirm, which might defeat an oral argument of the merits, furnishes new ground of complaint that the plaintiff in error is sought to be condemned without a hearing in ordinary course.

First.

The motion to dismiss is thus stated in adversary counsel's brief: "Linda Y. Spratley, the defendant in error, moves the court to dismiss the writ of error herein because there has been no return of the original writ of error and

because the writ of error and citation were made returnable more than thirty days from the day of the signing of the citation."

In reference to the first ground of the motion, counsel say in their brief: "The original writ has never been returned. A copy has been substituted in its place." This is a strange and palpable mistake. The record (page 48, etc.) sets out the writ of error in full and gives no intimation that the original was never returned. If matter dehors the record may be looked to, it will be found that the clerk of the State Supreme Court neglected when he sent the transcript to the clerk of this court to also send the writ of error and citation; but when advised of the neglect he promptly sent them, and since October 19, 1897, these documents have been on file in this court. The clerk of the State Supreme Court has the letter of the clerk of this court of date October 19, 1897, saying: "Yours of 14th inst. inclosing *original writ of error* and *original citation* in case of Connecticut Mutual Life Ins. Co., plaintiff in error, v. Spratley, duly received," etc.

In view of the decisions of this court in Mussina v. Cavazos, 6 Wall. 355, and Blitz v. Brown, 7 Wall. 693, this irregularity is not serious. The writ was served when deposited with the clerk of the State Supreme Court, and this court will allow the writ to be filed "at any time during the term in which the return day falls." The clerk of this court will sustain the statement of facts as here presented. The frivolousness of the first ground of the motion to dismiss is thus made apparent.

The second ground of the motion is not sustainable. Insofar as this objection goes to the return of the *citation* more than thirty days after its date, the opinion of this court in Shute v. Keyser, 149 U. S. 649, is decisive authority against the motion. There the question now made was involved, and the opinion of the Chief Justice disposes of it in the following language: "It is true that the rules so provide, but as the purpose of the citation is notice, so that the appellant may appear and be heard, any defect in that regard is not

jurisdictional and a new citation might be taken out if necessary, which it is not, as the appellees have appeared generally."

Seagrist v. Crabtree, 127 U. S. 773.

Here the appellee has appeared generally and is now pressing a motion to affirm. Besides, the appellee's counsel indorsed on the citation "*due and legal service* of the within is accepted," etc. Trans. p. 54.

As to *the return day* of *the writ of error*, it seems probable that it was inadvertently drawn from a form prescribed before the promulgation of the amendment of subdivision 5 of rule 8 (137 U. S. 710). It is returnable more than thirty days after the signing of the citation, but it is submitted that this mere mistake in the return day is not vital and jurisdictional. This writ is the process of this court addressed to the Supreme Court of Tennessee; it is signed and sealed and perfect in all respects, except that by inadvertence the direction of the amendment of subdivision 5 of rule 8 has been overlooked. It was duly served, and the State court has obediently sent the record and proceedings "with all things concerning the same" to this court, as commanded. The appellee has entered a general appearance, and now, after the return day, when the case is *rectus in curia*, the motion is made to dismiss the writ solely on the ground that there has been a mistake in the return day.

But it seems to be unnecessary to argue this point elaborately, inasmuch as under the broad and liberal provisions of section 1005 of the revised statutes this court may allow an amendment of the writ of error so as to make the return day conform to the directions of the amendment of subdivision 5 of rule 8; and if necessary in the opinion of this court, a motion to thus amend is now made.

And even if the court is of the opinion that the writ is bad and not amendable, the plaintiff in error is clearly entitled to ask to withdraw the record in order to sue out a new writ of error, inasmuch as the time limited for a writ of error has not expired; and if necessary, the motion is now made by the

plaintiff in error for leave to withdraw the record and sue out a new writ of error.

Porter v. Foley, 16 How. 393.
Blitz v. Brown, 7 Wall. 693.

It is submitted, however, that this will not be necessary, and it is believed that adversary counsel will not desire to provoke the delay incident to this course.

Second.

It is somewhat humiliating to the counsel for the plaintiff in error that the learned adversary counsel should so far depreciate his best effort to sustain his client's cause as to assume that the writ of error was sued out for mere delay, and to enter a motion to affirm based on this idea. But there is comfort in the consideration that, as stated by the counsel in his brief, the motion to dissolve the preliminary injunction before the chancellor involved the legal merits of the case and was elaborately argued, and that his decision on this motion and also at the hearing on the merits was for the plaintiff in error. Thus, in the progress of the suit there have been two decisions for the plaintiff in error and but one for the defendant. And yet in this court it is claimed that the one judgment for the defendant should be affirmed on mere motion.

It is, moreover, comforting to counsel to know that this motion is made by distinguished counsel without seeing the brief of his adversary, which is appended to this in resistance of the motion to affirm, and which was prepared for the hearing without reference to this motion.

That adversary counsel had not seen the brief of the counsel for the plaintiff in error excuses also certain palpable errors in his brief, which are now briefly enumerated:

1st. The first point stated and discussed on page 8 of the counsel's brief is not made or insisted on.

2nd. The second point of the brief elaborately discussed on pages 9–13 is not here involved. The decision of the State Supreme Court that *a proper construction of the act of*

1887 embraced this case is not and cannot be controverted here. That is no Federal question.

3rd. On page 21 of his brief, the counsel is mistaken in stating that "counsel for the insurance company denied the proposition that chapter 66 of the acts of 1875 was repealed by section 49, chapter 160, of the acts of 1895." No such denial was ever made. The brief when read shows quite clearly what the contention is in this respect. It was never insisted that since the act of 1895 there was any law "*compelling* the Secretary of State to accept service of process for any foreign life insurance company." The insistence has always been that the *power of attorney* executed in pursuance of the act of 1875 *expressly empowered the Secretary of State, as the insurance company's attorney in fact, to accept service for this company*, and also *authorized the service of process on him.*

4th. It is true that counsel for the insurance company did in the State court, as stated on page 26 of the brief of adversary counsel, contend that this case was not embraced within the terms and intent of the act of 1887; but when that court decided this point, the decision was conclusive. Error predicated of that decision could not be insisted on in this court.

Indeed, perhaps the greater part of the brief of counsel on this motion is devoted to questions not made in this court. In view of these mistakes of the learned counsel, and of the argument of the brief, it is not strange that they should also be grievously mistaken in assuming that this writ of error is prosecuted for mere delay.

With these preliminary remarks, the brief on the merits is humbly and respectfully submitted for the consideration of the court.

STATEMENT OF CASE.

The plaintiff in error seeks here to review the judgment, and decision of certain *federal questions* by the Supreme Court of Tennessee.

This bill in equity was filed in the Chancery Court of Shelby County, Tennessee, on October 10, 1896, by the Connecticut Mutual Life Insurance Company against Linda Y. Spratley to enjoin the enforcement of a *judgment by default* taken in favor of the defendant against the plaintiff in error, in the Circuit Court of Shelby County, Tennessee, in July, 1896. The judgment is alleged to have been founded on two life policies of insurance issued by the insurance company, and it is charged that "the said policies upon which said judgment was rendered were obtained by the assured *upon false and fraudulent representations*, and on this and other grounds they were void." The bill alleges that "there is nothing due the defendant on said policies or on said judgment, and the attempted enforcement thereof by the means stated above is inequitable and wrongful." Trans. p. 2.

The plaintiff in error was a non-resident of Tennessee when the action at law was instituted, had no office or agent and was not "doing business" in that State. After the death of the assured, as is customary in such cases, a special employee of the company, and not by any means *its representative to accept or be served with process*, visited Memphis to investigate and report to the company the facts of the case, and while there the legal process in the suit on the policies was served on him, in supposed conformity to the provisions of the extraordinary and radical act of the Legislature of Tennessee, approved March 29, 1887, which is copied in full in the appendix to this brief. It was distinctly alleged that the act of 1887 was unconstitutional and that the service of process was *not* "*due process of law*" and violated article 5 of the amendments to the Constitution of the United States, and the

14th amendment, which provides "that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property *without due process of law*, nor deny to any person within its jurisdiction the equal protection of the laws."

Another federal question was raised and decided by the State Supreme Court against the plaintiff in error. It was this: While the plaintiff in error was doing business in the State of Tennessee, from 1870 to 1894, it strictly complied with the statutory laws of the State, and especially with the requirement and condition of section 12 of the act of March 22, 1875, which is entitled "An Act to regulate the business of life insurance in the State of Tennessee." This entire act is copied in the appendix. It was claimed that the compliance with this condition of the law and the execution of the power of attorney authorizing the Secretary of State to acknowledge service of process (which power of attorney should be irrevocable "even though the company should retire from the State or be excluded therefrom") constituted a contract between the company and the State to the effect that the former should be brought into the courts of the State through the Secretary of State as its attorney in fact, and that the subsequent act of 1887 subjecting it to suit by service of process on any agent, "*no matter what character of agent such person may be*," so that it might be sued by service of process on some person who was not in any sense its representative, *impaired the obligation of the contract* and violated section 10 of Article 1 of the Constitution of the United States. It is not contended that *the act itself* constituted a contract which could not be repealed nor amended, but that in this respect it was the proposed terms of a contract which, when accepted and the power of attorney executed in conformity thereto, made the contract; and which by the express terms of the act became irrevocable although the company should retire from the State or be excluded. The subsequent repeal of this *act* did not affect or repeal *the continuing contract* made in pursuance of its terms. The power of attorney prescribed by the State officials in pursuance of the act expressly

provides: "And the said company, *in consideration* of the privilege of doing business in said State of Tennessee, *consent to and with said State of Tennessee* for the benefit of all persons concerned *that service of such process upon said Secretary of State* shall be taken and held to be valid as if served upon it, the said company above named, according to the laws of said State of Tennessee or any other State, and the said company does hereby further *consent* that *in case it, the said company, shall cease to transact business in the State of Tennessee, said Secretary of State shall be considered and held as continuing to be attorney for it, the said company, for the purpose of process as aforesaid*," etc.

It is not and cannot be denied that at the date of the passage of the act of 1887 and at the commencement of the suit on these policies the Secretary of State, by virtue of the contract and power of attorney made in pursuance of the act of 1875, *was the continuing attorney in fact of this company upon whom the process could and should have been served.* The State, by the act of 1887 providing that service on an employee *who was not the representative of the company*, violated the letter and spirit *of this contract* made under the terms proposed by the act of 1875. Although the chancellor decided the case for the company, the Supreme Court of the State in express terms decided these federal questions against it, and hence the writ of error and the pendency of the case in this court.

ASSIGNMENTS OF ERROR.

1st. The Supreme Court of Tennessee erred in adjudging and deciding that the service of the legal process in the suit at law upon the policies of insurance, on O. N. Chaffee, the special *employee* of the plaintiff in error, while temporarily in Memphis to investigate and report the facts in reference to the claim under these policies, was "due process of law and not in violation of the 5th and 14th amendments of the Constitution of the United States."

2nd. The said court erred in adjudging and deciding that the act of the Legislature of Tennessee entitled "An Act to subject foreign corporations to suit in this State," approved March 29, 1887, being chapter 226 of the Acts of 1887 and found on page 386 of the published Acts of 1887, *and the enforcement thereof* 'doth in nowise' violate the 5th or the 14th amendments of the Constitution of the United States."

3d. The said court erred in adjudging and deciding that the acceptance by the plaintiff in error of the terms and conditions of section 12 of the act of the Legislature of Tennessee passed and approved March 22, 1875, chapter 66, on page 76 et seq. of the published Acts of 1875, by executing the power of attorney appointing the Secretary of State as its attorney to accept or be served with legal process in all suits in the courts of Tennessee, as shown by this record, did not constitute a contract between the State of Tennessee and the plaintiff in error, and that the provisions of the act of 1887 of said Legislature authorizing the service of process on any agent of said company, "no matter what character of agent such person may be," and the enforcement of said act of 1887 by the service of the legal process in the suit at law on the two policies of insurance shown in this record on O. N. Chaffee, a special employee of the plaintiff in error temporarily in Memphis only to investigate and report on the claim under said policies after the death of the assured, did not violate section 10 of Article 1 of the Constitution of the United States, which, amongst other things, provides that "no State shall pass any law impairing the obligation of contracts."

These federal questions are pointedly and expressly made in the pleadings in this case, and have been clearly decided against the plaintiff in error by the State court.

Trans. pages 2, 3, 48, 49, 50, 52.

BRIEF OF THE ARGUMENT.

Firs .

If there exists at this time in many States a growing prejudice against corporations, and especially against foreign corporations, and a tendency toward harsh and unjust legislative enactments affecting the rights and interests of such corporations, it is well that when their rights are attacked or imperiled they have the federal tribunals, exalted above the reach of popular excitement, to which they may appeal for protection and redress.

The question involved in this case is one of grave concernment to the plaintiff in error here, and to all other private corporations doing business in other States of the Union than their own. Have the liability and personal rights of the plaintiff in error been adjudicated *without due process of law* within the meaning of the Constitution of the United States by the Supreme Court of Tennessee? We submit that they have been, and now attempt to establish the proposition.

This record shows without contradiction that the plaintiff in error transacted business in full compliance with the laws of the State in Tennessee from 1870 to July 1, 1894. At the last named date it withdrew from the State and ceased to do business therein, because of the excessive mortality of its members and of the excessive rate of taxation imposed by the State.

Trans. pp. 14, 16.

The policies in question here were issued in 1893, and it must be borne in mind that the plaintiff in error was then doing its business as to service of process, not under the act of 1887, but under the act of 1875, and consequently it never in any manner consented to or became amenable to the harsh terms of this act of 1887. It entered the State of Tennessee in 1870 "to do business" after a full compliance with the

terms prescribed by the then existing laws, and on March 17, 1876, it complied fully with the terms and conditions of the act of 1875 and executed its irrevocable power of attorney appointing the Secretary of State to acknowledge service of process, and providing that "*service of any such process* upon said Secretary of State shall be taken and held to be valid as if served on it, the said company, etc." The company continued to transact its business in the State until 1894, when it withdrew from the State and ceased its business there.

Trans. pp. 21, 22, 14.

By *the emphatic terms of the act of* 1875 *and of the power of attorney, the withdrawal of the company from the State did not revoke or affect the power of attorney;* but, *after that event, as before, it was subject to the jurisdiction of the State courts by process served on the Secretary of State as its agent.*

The compliance with the conditions of the act of 1875 and the execution of the power of attorney are regarded as a submission to the jurisdiction of the State and its courts, and the company thereby in a sense acquired a domicile in Tennessee.

Osborne v. Insurance Company, 51 Vermont 280.
Insurance Company v. Woodworth, 111 U. S. 145.
Life Association v. Vogel, 76 Ala. 441.
Ex parte Schollenberger, 96 U. S. 374.

The method of acquiring jurisdiction prescribed by the statute and the power of attorney is exclusive.

Oakland v. Insurance Company, 69 Md. Rep. 248.
Liblong v. Insurance Company, 82 Pa. (St.) 413.
Thayer v. Tyler, 10 Gray 164.
Tusten v. Eastland, 89 Mo. 13.

In these cases, as here, the foreign insurance companies had complied with the statutes prescribing that a power of attorney should be executed, and the courts held that service on other supposed agents was insufficient.

Under these circumstances, while this company had submitted to the jurisdiction of the State, with its agent expressly

empowered to be served with process, and that agency exclusive, it would seem that service of process on a *mere employee* temporarily in the State, who had no authority to represent it, except to investigate and report the facts of the case, and not its direct representative, or alter ego in any legal sense, was not *due process of law.*

This court has said, "Can a State make anything due process of law which by its own legislation it chooses to declare such? To affirm this, is to hold that the prohibition to the States is of no avail or has no application when the invasion of private rights is effected under the forms of State legislation."

Davidson v. New Orleans, 96 U. S. 97, 102.
Railroad v. Chicago, 166 U. S. 235.

The recognized legal principle is, that a foreign corporation cannot exercise its franchises and do business in another State except *by comity*, or in pursuance of statutory conditions and authority. In this case the plaintiff in error obtained this right by compliance with the terms and conditions of the act of 1875, and was exercising it in 1887 when the act of that year was passed. That act did not change the attitude or condition of this company in the State of Tennessee; it simply, as virtually held by the State court, prescribed a new method of subjecting it to the jurisdiction of the State courts. The company never in any manner, directly or by implication, assented to the terms of this act, and is not, therefore, bound by it; so that the simple question is, whether by the enforcement of that act the plaintiff in error was subjected to the jurisdiction of the court *by due process of law.*

The general rule is that notice to an agent is notice to the principal, but notice to the agent to bind the principal must be *within the scope of the agent's authority*, and notice to the agent of any fact outside of the agency will not affect the principal. These are rudimentary principles. In Railroad Company v. Elliott, 1 Cold. (Tenn.) Rep. 611, the court say: "The established rule that notice to an agent in the transaction for which he is employed and *within the scope of his author-*

ity is notice to the principal, applies to corporations as to a natural person."

In Insurance Company v. French, 18 How. 407, this court say: "The inquiry is not whether the defendant was personally within the State, but whether he, or someone authorized to act for him *in reference to the suit*, had notice."

That this *employee*, temporarily in the State simply to investigate and report to the company the facts of this case, without any authority beyond this, was not authorized *to act for it in reference to the suit*, and that the service of process on him was not *within the scope of his powers*, seem to be quite obvious. And that while in the State he received a telegram from the company to the effect "We think case should be settled for reserve or thereabouts" is of no importance when *it is fully proven that the employee had no authority to settle or compromise or bind the company in any manner.*

Trans. p. 27.

The terms and extent of Chaffee's authority to represent the company are proven by the written contract itself and by Chaffee's and Taylor's depositions.

Trans. pp. 22, 23, 16, 25, 26.

York's testimony of what Chaffee said to him of his agency is incompetent, and of no force in conflict with the other clear testimony on this point.

The State court by its opinion (Beard, J., Trans. p. 41) seems to assume that the test of valid service of process is whether the notice actually reaches the defendant. The judge cites an extreme case and says: "While not feeling it necessary to agree to the decision reached, yet the following paragraph taken from the opinion in that case does meet with our approval: 'The object of all service of process for the commencement of a suit or any other legal proceedings is to give notice to the party proceeded against, and any service which virtually accomplishes that end answers the requirements of natural justice and fundamental law' (Gibbs v. Queen Insurance Co., 63 N. Y. 114), and *what service shall be*

*deemed sufficient for that purpose is to be determined by the legislative power of the country in which the proceeding * * * is instituted, subject only to the limitations that the service must be such as may be reasonably expected to give the notice aimed at.*" The learned justice proceeds: "So in that case the Supreme Court of New York held that while the president of this corporation was not within the State on the business of the corporation, *yet as it was his duty to convey notice* of the commencement of the suit to his company, that he would do so could be reasonably presumed and expected."

If this doctrine, that if it may be "reasonably presumed and expected" that a party on whom legal process is personally served will give notice to the real defendant, then the service is valid be accepted, or even that actual knowledge by the non-resident defendant of the commencement of the suit without regard to due service of process, is good service, then the well established rule of this court in Pennoyer v. Neff, 95 U. S. 714, and Tripp v. Street R. R. Co., 144 U. S. 126, that service by sending process from the State of the situs of the suit into the State of defendant's domicile is not valid service, even if actually received, must be repudiated, and it would follow that process against A served on B would be good if it was reasonably certain that B would inform A of the service, or even if it be shown by proof that he did actually inform him. That it is reasonably certain that the party personally served will inform the defendant, or that proof that the defendant actually knew of the institution of the suit, cannot be the test of the jurisdiction of the court, but rather, that a proper representative of the defendant has been duly served with valid legal process; and in that event it is not material to the jurisdiction whether the proper agent actually informed the principal of the suit or not. The case of Gibbs v. Queen Insurance Company, 63 N. Y. 114, cited by the State court in its opinion, involved no question of due process of law within the meaning of the Constitution.

Then, aside from the effect on this question of the fact that this company actually had a representative in Tennessee specially and formally empowered to be served with process, it is

submitted that the service of process in this case was invalid. And of course the sanction of the act of 1887 can not make the service valid unless the service of process prescribed by it meets the demands of natural justice within the meaning of the constitutional limitation.

The act of 1887 authorizing the service of process "*on any agent*" found within the county, "*no matter what character of agent such person may be*" breathes seemingly the spirit of antagonism to the restraints of constitutional limitations and of natural justice. Under that intensive language it makes no difference that the service of process is not *within the scope of the agent's authority*, or, in the language of this court, that the agent was not authorized to act for the principal "*in reference to the suit.*" And the service of the process on *an employee* who was temporarily present, without any authority to represent the principal, except to investigate and report facts, was a fitting enforcement of the statute. And the injustice of the enforcement of the statute is emphasized by the fact that at the time, the principal had its legal and formal agent in the State *expressly appointed for the service of process.*

It is noteworthy that this act of 1887 contemplated that this service on any agent "no matter what the character of the agent might be" would be ineffectual, for after prescribing such service it proceeds in the same section as follows: "but in order that the defendant corporation may also have *effectual* notice, it shall be the duty of the clerk to immediately mail a copy of *the process* to the home office, etc.," thus providing for the sending of process from one State into another, which had been expressly reprobated by the decision of this court.

In Phillips v. Insurance Company, 62 Iowa 633, the service of legal process was on "C. E. Hambleton, assistant manager of agencies of said association and general agent of defendant," and a judgment by default was taken. Motion to set aside judgment "because the defendant had not been served as required by law and the court had no power or authority to entertain jurisdiction and to render judgment." The evi-

dence showed that Hambleton was in Keokuk at the time of the service acting as the attorney of defendant in an action before a justice of the peace; that his home was in Illinois; that he had no headquarters in Iowa; that he was assistant manager of agencies and acted for the company wherever sent out by them to investigate losses, to look up testimony in lawsuits in which the company was engaged, and at times to "look after local agents, *investigate the facts and report to the general manager*, but that he did not take risks or issue policies, etc." The court held that the service was not good, and say: "As Hambleton was not employed in any office or agency for the defendant in this State and was not appointed as agent of the defendant under section 1165 of the code (which required the appointment of an agent on whom process might be served as one of the conditions of doing business in the State), it follows that service upon him can be sustained only under section 2612 of the code, upon the ground that he was employed in the general management of the business of the defendant;" and, the court then held that he was not such agent as this section of the code prescribes.

The syllabus of the case of Mulhearn v. Press Co., 53 N. J. Law 150, is as follows: "In an action against a New York corporation publishing a newspaper there, service of summons in this State on an agent whose only connection with the company consists in receiving advertisements at the published rates, forwarding the same to the home office, receiving thence bills for the same and collecting them on commission, is not a service upon an agent of the company within the meaning of section 88 of the corporation act."

In Liblong v. Ins. Co., 82 Pa. (St.) 413, the foreign insurance company had complied with a statute regulating the business of insurance companies within the State substantially like the Tennessee statute of 1875, by giving a written stipulation agreeing that service of process should be on the insurance commissioner, &c. The process was served on an agent sent out to solicit risks. The court held that the service was not good, and said: "Now, as a reasonable conclusion from these provisions (of the statute), the company must be protected in

the proper enjoyment of its privileges. Having an actuary or agent armed with a certificate of authority and an office or place of business, it is but reasonable that a company should be served with process upon its authorized agent *for whom a stipulation* is given, at its place of business; and not that every agent in every county in the State, sent out merely to solicit risks, should be its representative."

The presence of an officer of a foreign corporation in the State of New York merely to negotiate a loan upon a mortgage of its property, does not make service upon him in an action against the company a valid one.

Clews v. Iron Co., 44 Fed. Rep. 31.
See 137 U. S. 98.

When a foreign insurance company has, in accordance with law, designated a general agent within the State on whom service of process may be made, service upon another person who is merely a soliciting agent is invalid.

Thayer v. Tyler, 10 Gray 164.
76 Alabama 441.
Oakland v. Ins. Co., 69 Md. 248.
See R. R. Co. v. Walker, 9 Lea (Tenn.) 475.

Mr. J. Brown in Maxwell v. R. R. Co., 34 Fed. Rep. 286, decided that "a person whose sole duty is to solicit travel for the railroad company he represents is not an agent upon whom process may be served, *even though he was employed by it to try to compromise the claim involved in the suit.*" Mr. Murfree, in his recent work on foreign corporations, section 210, says: "The principle has been carried even further. In a suit against a corporation which had no office or place of business within the State and had transacted no business there except that which the president *was there temporarily to settle* when he was served with process, it was held that such service conferred no jurisdiction of the company."

The author, in the next section, proceeds to show that a different rule prevails in New York, and it seems that the

opinion of the State court relies much on the New York cases.

See R. R. Co. v. Pinckney, 149 U. S. 194.
In re Hohurst, 150 U. S. 653.

In Pennoyer v. Neff, 95 U. S. 733, this court says: "Since the adoption of the fourteenth amendment to the Federal Constitution, the validity of such judgments may be directly questioned and their enforcement in the State resisted on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom the court has no jurisdiction do not constitute *due process of law*. Whatever difficulty may be experienced in giving to these terms a definition which will embrace every permissible exertion of power affecting private rights and exclude such as are forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceeding *according to those rules and principles* which have been established *in our systems of jurisprudence* for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject matter of the suit, *and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.*"

Tripp v. Street R. R. Co., 144 U. S. 126.
Scott v. McNeal, 154 U. S. 34.

Whatever variety may be found in the adjudged cases of the State courts, it may be safely affirmed that no case can be found in which this court has sustained a judgment based on the service of process on one who was not legitimately "the direct representative" of the defendant, as it is expressed by Mr. Justice Jackson in Mexican Central R. R. Co. v. Pinkney, 149 U. S. 195, 202.

As said in the opinion of this court in St. Clair v. Cox, 106 U. S. 353: "The courts of the United States only regard judgments of the State courts establishing personal demands, as having validity or as importing verity where they have

been rendered upon personal citation of the party, or, what is the same thing, *of those empowered to receive process for him*, or upon his voluntary appearance."

In the same case, 106 U. S page 359, etc., the authoritative and controlling principle is stated as follows: "Without considering whether authorizing service of a copy of a writ of attachment as a summons on some of the persons named in the statute—a member, for instance, of the foreign corporation, that is, a mere stockholder—is not a departure from the principle of natural justice mentioned in Lafayette Insurance Co. v. French, which forbids condemnation without citation, it is sufficient to observe that we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record—either in the application for the writ, or accompanying its service, or in the pleadings or the finding of the court—*that the corporation was engaged in business in the State.* The transaction of business by the corporation in the State, general or special, appearing, a certificate of service by the proper officer on a person who is its agent there, would, in our opinion, be sufficient *prima facie* evidence that the agent represented the company in the business. It would then be open, when the record is offered as evidence in another State, to show that the agent *stood in no representative character to the company, that his duties were limited to those of a subordinate employee, or to a particular transaction*, or that his agency had ceased when the matter in suit arose.

"In the record, a copy of which was offered in evidence in this case, there was nothing to show, so far as we can see, that the Winthrop Mining Company was engaged in business in the State when service was made on Colwell. The return of the officer, on which alone reliance was placed to sustain the jurisdiction of the State court, gave no information on the subject. It did not, therefore, appear even *prima facie* that Colwell stood *in any such representative character* to the

company as would justify the service of a copy of the writ on him."

Second.

It is next insisted for the plaintiff in error that the compliance by it with the terms of the act of 1875, by executing the power of attorney in accordance with the requirement of said act appointing irrevocably the Secretary of State its attorney for the service of process, was in the nature of *a contract* between the State and the company, making the Secretary of State the *exclusive* agent and attorney for the service of process; and that the act of 1887 arbitrarily providing that process might be served on "any agent, no matter what the character of the agency might be," impaired the obligation of the contract based on the act of 1875, and violated section 10 of Article 1 of the Constitution of the United States. That by compliance with the terms of the act of 1875 a contract was created between the State and the complying company is demonstrable.

The act itself prescribes and proposes to foreign life insurance companies the terms and conditions upon which they will be licensed to carry on business within the State of Tennessee. The State proposes to issue its licenses if the companies will pay a certain tax and comply with certain other conditions, one of which is to place themselves within the jurisdiction of the State courts by the execution of a power of attorney appointing the Secretary of State their agent for the service of legal process. No insurance company was in any manner bound by this act (and no company could obtain the privilege proposed), without a compliance with its terms and conditions. When its terms were accepted and complied with by any life insurance company, reciprocal rights and obligations were conferred on, or assumed both by the State and the company.

The State thereby became bound *by contract* to issue the license and protect the company in the enjoyment of the privileges prescribed. If it should permit itself to be sued,

the State would doubtless be liable to an action for a violation of its obligation to issue the license or to protect the company in the enjoyment of its privilege of doing business in the State. The complying company not only becomes liable to pay the tax as *a consideration* for the privilege of doing business, but, as *a further consideration*, by the execution of the power of attorney it becomes liable to the process of the State courts. To be sure, the execution of the power of attorney is in part the consideration moving from the company to the State, yet if there is a limitation of the obligation assumed by the company, it is clearly entitled to the benefit of the limitation as *a part of the contract.* An obligation assumed in a contract to pay one thousand dollars is a clear limitation of the obligation to the payment of one thousand dollars only. Under it the obligor cannot be forced to pay two thousand dollars, and the limit of one thousand is a part of the contract. Under this act the complying company was not bound to appoint two or more attorneys for the service of process, but one only, and that the Secretary of State. And when by the execution of the power of attorney it appointed *the one attorney*, the condition of the contract in this regard was fully complied with. Hence, under the authorities the appointment of the Secretary of State *was exclusive.* Judge Cooley says: "Nevertheless there may be laws which amount to propositions on the part of the State, which, if accepted by individuals, will become binding contracts."

Cooley's Const. Lim. (5th Ed.) 345.
Water Co. v. Rivers, 115 U. S. 674.
Gas Co. v. Gas Co., 115 U. S. 683.

The constitutional limitation protects *implied* as well as express contracts.

Fisk v. Jefferson, etc., 116 U. S. 131.

The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. *Any deviation from its terms is sufficient.*

Walker v. Whitehead, 16 Wall. 314.
Green v. Biddle, 8 Wheat. 84, 85.

This court in Ex parte Schollenberger, 96 U. S. 376, speaking of the effect of compliance with the terms of a statute like the one under discussion, say: "They (the insurance companies) have, in express terms, *in consideration* of a grant of the privilege of doing business in the State, *agreed* that they may be sued there; that is to say, that they may be found there for the purposes of the service of process, etc."

Railroad Co. v. Harris, 12 Wall. 81, and

See Osborne v. Insurance Co , 51 Vermont 278.

Thus the transaction involves the grant of a privilege by one party and *a consent* to terms proposed by the other party, as *the consideration of the grant.* These are the elements of a valid contract between the State and the insurance company.

It being already shown by the citation of authorities that when the Legislature prescribes the method by which foreign corporations may be sued, this method *is exclusive of all others*, the conclusion must be that the State of Tennessee by implication agreed that process in this case should be served on the Secretary of State *only*, and that this method should be exclusive. And by the extraordinary act of 1887 empowering the courts to take jurisdiction of this company by service of process upon any agent, whether the direct or proper representative of the company or not, it violated the contract already made by it. The contract characteristics of this transaction are made prominent in the power of attorney which this company executed.

Trans. p. 21.

The act of 1875 provides that the insurance commissioner shall prepare and furnish "printed forms" of certain documents prescribed thereby, and no doubt a printed form of the required power of attorney was furnished this company, and that it was formulated and furnished by the State officer. This power of attorney provides amongst other things as follows: "And the said company does hereby, *in consideration* of the privilege of doing business in said State aforesaid, *consent to and with* said State of Tennessee, for the benefit of all parties concerned, that *service of any such process* upon said

Secretary of State shall be taken and held to be valid as if served on it. * * * And the said company does hereby further *consent* that in case it, the said company above named, shall cease to transact business in the said State of Tennessee, said Secretary of State shall be considered and held *as continuing* to be attorney for it, the said company, for the purpose of process as aforesaid in any action against it, etc."

Thus in 1887 and in 1896 and since 1876 this *continuing* power of attorney stood on file in the archives of the State unimpaired and unrevoked. This is so not only by the express provisions of the act of 1875, but by the direct terms of the power of attorney itself. And it is proven that the power of attorney had never been revoked.

Trans. p. 16.

We do not insist that the State could not repeal or modify the act of 1875, but we do insist that the simple repeal of the statute did not affect the power of attorney or the vested rights of the company thereunder, which stood independent of the statute. The State court in its opinion (trans. pp. 43 and 44) committed the error of applying to this case the well established general rule that when civil proceedings depend upon a statute they fall with the statute, and the authorities for this proposition are copiously cited. It is submitted that this rule and the authorities cited have no application to this case, but that it is controlled by the clear statement of doctrine in the case of Steamship Co. v. Joliffe, 2 Wall. 457, etc. This court there say: "When a right has arisen upon a contract *or a transaction in the nature of a contract* authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, *the repeal of the statute does not affect it, or an action for its enforcement.* It has become a vested right which stands independent of the statute," etc.

Here the power of attorney had been executed and nothing remained to be done by the company. Its rights under it were vested, and the repeal of the statute out of which it arose did not affect these perfected rights, or the power of attorney itself.

The defendant relies upon the act approved May 11th, 1895, which by its 49th section repeals this act of 1875. Adversary counsel will copy this act with their argument, inasmuch as they rely upon it. It is found at page 322 of the Acts of 1895. The act of 1875 stood unrepealed for more than twenty years, during which period the statute of 1887 was enacted, the policies of insurance involved in this case were issued and the plaintiff in error had withdrawn from the State of Tennessee and had ceased to do business in the State. The act of 1895 is a new scheme for regulating and licensing the business of insurance in Tennessee, and requires insurance companies, as one condition to the doing of business, to execute a power of attorney appointing "*the Insurance Commissioner*" (instead of the Secretary of State) as their attorney for the service of process. As the plaintiff in error had at the date of the passage of this act withdrawn from the State and never did any further business in the State, it did not comply with its terms and the act was never binding on it. This statute makes no special reference to the act of 1875 or to powers of attorney executed under it. It merely by its 49th section repeals, with other statutes, "ch. 66 of the acts of 1875," which is the act of 1875 under which the power of attorney involved in this case was executed.

Inasmuch as the office of Secretary of State is a permanent one and has never been abolished, it would seem to be needless to notice the argument of the opinion of the State court based upon the hypothesis of the abolition of that office. It is presumable that inasmuch as this officer is a State officer and designated by the State itself, its Legislature would, upon the happening of the contingency of the abolition of the office, make suitable provision for the exigency. There is one paragraph of the opinion in this connection, however, which is founded upon another palpable misapprehension, and which is so misleading that it should be briefly noticed. The learned judge says: "If the argument of complainant's counsel *on this point* is sound, if the office of the Secretary of State should be abolished, this result being the act of the State, for which complainant would be in no wise responsi-

ble, then our citizens could obtain no redress for their grievances sustained at the hands of this company in their domestic courts, *even if there was an agent with full power of representation residing in each county of the State.* A position from which such a conclusion may be deduced we think necessarily unsound." This attempted *reductio ad absurdum* is based upon a clear misunderstanding of the argument of counsel and upon the erroneous conclusion drawn therefrom by the court. The reasoning of the opinion places the plaintiff in error in the bad attitude of contending through its counsel for a legal proposition in this court which leads to the absurd result that the abolition of the office of Secretary of State would leave no method of redress against this company, "*even if there was an agent with full power of representation residing in each county of the State.*" This statement of the opinion demands a brief answer and denial, in order to remove the hurtful effect which it might have if unchallenged. With great respect for the State court, it is submitted that no such consequence could ensue from the abolition of the office of Secretary of State "if there was an agent with full power of representation residing in every county of the State;" for in such case the service of process on any of such agents would, of course, be valid service *under general legal principles and independent of the statutory enactment.* This is elementary law and beyond dispute.

An agent "*with full power of representation residing in the State*" would be, *under general principles of law*, "*the direct representative of the principal*," the service on him would be "*within the scope of his agency*," and in a word he would be under all the authorities the *alter ego* of the principal. The burden not only of the argument of counsel *but of the pleadings* in the case has been from the beginning that the service of process prescribed by the act of 1887 and the actual service of process thereunder in this case was not on "an agent with full power of representation residing in the State," but upon "*any agent, no matter what character of agent such person may be*," and in truth upon a *mere employee without any power of representation* except for the investigation of the facts of a past transaction.

Of course if the *remotissima possibalia* of the abolishment of the office of Secretary of State had occurred, or even if all statutes in Tennessee for allowing foreign insurance companies to do business in the State had been repealed, and this company had *by comity* been doing business in the State, with its agents "*with full power of representation residing in every county of the State*," service of process upon any of such agents would have been valid by general law, independent of any statute on the subject. This principle is well established, and the State court in its opinion was clearly mistaken in stating that if the argument of counsel "on this point" is sound, and if the office of Secretary of State should be abolished, "our citizens could obtain no redress for their grievances sustained at the hand of this company, *even if there was an agent with full power of representation residing in every county of the State.*" That this conclusion is erroneous is shown by the authorities cited supra, embracing adjudged cases by this court.

B. M. ESTES,
Solicitor for Plaintiff in Error.

APPENDIX

CHAPTER CCXXVI.

AN ACT to subject foreign corporations to suit in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennesse*, That any corporation claiming existence under the laws of any other State, or of any country foreign to the United States found doing business in this State, shall be subject to suit here, to the same extent that corporations of this State are, by the laws thereof, liable to be sued so far as relates to any transaction had in whole or part within this State, or any cause of action arising here, but not otherwise.

SEC. 2. *Be it further enacted*, That any corporation having any transaction with persons or having any transaction concerning any property situated in this State, through any agency whatever, acting for it within the State, shall be held to be doing business here within the meaning of this act.

SEC. 3. *Be it further enacted*, That process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be; and in the absence of such an agent, it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return, and service of process so made shall be as effectual as if a corporation of this State were sued, and the process has been served as required by law; but in order that defendant corporation may also have effectual notice, it shall be the duty of the Clerk to immediately mail a copy of the process to the home office of the corporation by registered letter, the postage and fees for which shall be taxed as other costs. The Clerk shall file with the

papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon the docket, and no judgment shall be taken in the case until thirty (30) days after the date of such mailing.

SEC. 4. *Be it further enacted*, That it shall be the duty of the plaintiff to lodge at the home office of the company, with any person found there, a written notice from him or his attorney, stating that such suit has been brought, accompanied by a copy of the process and the return of the officer thereon, of which fact affidavit shall be made by the person lodging the same, stating the facts and with whom the notice was lodged, or else the plaintiff or his attorney shall make an affidavit that he has been prevented from serving such notice by circumstances which should reasonably excuse giving it, which circumstances the affidavit of the plaintiff or his attorney shall particularly state; and no judgment shall be taken until one or the other of these affidavits shall be filed and the court be satisfied that the notice has been given the defendant, or that the excuse for not doing so be sufficient.

SEC. 5. *Be it further enacted*, That this act take effect from and after its passage, the general welfare requiring it.

Passed March 28th, 1887.

W. L. CLAPP,
Speaker of the House of Representatives.

Z. W. EWING,
Speaker of the Senate.

Approved March 29th, 1887.

ROBERT L. TAYLOR,
Governor.

CHAPTER LXVI.

AN ACT to regulate the business of Life Insurance in the State of Tennessee

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall not be lawful for any Life Insurance Company chartered by the United States, or any State of the United States, or any foreign government, or any agent or agents thereof, or by the laws of Tennessee, to transact any business of Life Insurance in this State, without first procuring a license therefor, from the Bureau of Insurance, and a certificate of authority for each agent employed.

SEC. 2. *Be it further enacted*, That any such company applying for such license, shall present to the Insurance Commissioner a sworn statement of the President and Secretary thereof, exhibiting:

First. The name and parent office of the company.

Second. The financial condition of such company on the 31st day of December of the year preceding the date of application.

Third. The amount of the capital stock of the company, and what part of the same has been paid in cash, and what part of the same has been paid in notes of the stockholders, together with a full exhibit of the assets and liabilities; in what the former consists, and what the latter, and when and how due.

Fourth. The income and expenditures for the year preceding.

Fifth. A copy of the charter of such company, certified by authority; and this statement shall be filed with the Insurance Commissioner.

SEC. 3. *Be it further enacted*, That it shall be the duty of the Insurance Commissioner, if the statement and exhibit of any company chartered by the United States, or any other State, or foreign government, should show it to be in a sound and solvent condition, to issue thereupon a license to transact the business of Life Insurance within the limits of the State, upon the terms and conditions set forth in this section, and those hereinafter provided, viz.: Whenever the existing or future laws of any other State of the United States shall require of the Life Insurance Companies chartered by this State, and having agencies in such other State, or of the agents thereof, any deposits of security in such State, for the protection of policyholders or otherwise, or any payment for taxes, penalties, license, fees, or otherwise, greater than the amount required for such purpose from similar companies of other States, by the existing laws of this State,

then, and in every such case, all companies of such State establishing, or having heretofore established, an agency or agencies in this State, shall be and are hereby required to make the same deposits in bonds of the State of Tennessee, for a like purpose, with the Comptroller of the Treasury of this State, or with the similar officer of the State in which the parent office of the company may exist, and to pay to the Comptroller of this State, for taxes, penalties, license and fees of all kinds, an amount equal to the amount of such charges and payments imposed by the laws of such State upon companies of this State, and the agents thereof; and all companies chartered by the United States, and other States having no laws requiring deposits of security, and by foreign governments, shall deposit with the Insurance Commissioner, to be kept in the custody of the Comptroller of the Treasury, a certificate duly attested by the proper officer, under the laws of the State or government in which such company or association is incorporated or organized, that securities to the actual value of at least one hundred thousand dollars have been deposited with him to secure the policyholders, consisting of bonds of this State, the United States, or of the State in which such company is organized, or of notes or bonds secured by mortgage on real estate, for double the amount, and stating the time and amount of each of such bonds, notes or stocks, and that he is satisfied they are worth one hundred thousand dollars.

SEC. 4. *Be it further enacted*, That no Life Insurance Company or association, organized or chartered under the laws of this State shall transact business, unless, within three months from the passage of this act, it shall have deposited with the Insurance Commissioner, for the security of its policyholders, the sworn statements of the President, Vice-President and the Secretary or Actuary of such company or association, that they have invested in the bonds of this State, or of the United States, or in notes or bonds secured by mortgage on real estate for double the amount loaned, one hundred thousand dollars, always subject to the inspection of the Insurance Commissioner at any time he may deem proper to examine them; and should the investments of any company or association doing business of Life Insurance in this State be less than one hundred thousand dollars at any time after such certificate is given, it shall be reported to the Insurance Commissioner in thirty days thereafter, under penalty of five hundred dollars for each month said report is withheld.

SEC. 5. *Be it further enacted*, That every Life Insurance Company chartered by this State, and all companies chartered by the United

States, or under foreign governments or other States of the United States, to which the reciprocal provisions of Section 10 of this Act do not apply, and to any one of them by the laws of the State in which chartered there may be no license fee or taxes required, shall pay to the Comptroller of the Treasury, in lieu of all other taxes, a tax of one and a half per cent. on gross premium receipts, payable on the first days of January and July of each year, on sworn statements of the President or Secretary of the company.

SEC. 6. *Be it further enacted*, That the Insurance Commissioner shall require annual sworn statements on the 31st day of December, or within thirty days thereafter, of each year, of every company, home and foreign, transacting Life Insurance business in this State; said statement to contain the full exhibit of facts described in Section 2 of this act, and to be made by the President and Secretary thereof.

SEC. 7. *Be it further enacted*, That any companies to which the reciprocal features of this act applies, shall pay such taxes as are now assessed by law on all Insurance Companies, and such fees as may be charged by the State in which chartered or organized.

SEC. 8. *Be it further enacted*, That every company, home and foreign, transacting the business of Life Insurance in this State, shall be required to pay, annually, the sum of fifty dollars to the Insurance Commissioner for the labor of examining and furnishing blanks for the sworn statement and exhibit thereof, and the sum of six dollars annually for each certificate of authority for every agent employed.

SEC. 9. *Be it further enacted*, That it shall be the duty of the Insurance Commissioner, whenever he shall have good reason to suspect that the affairs of any Life Insurance Company doing business in the State, whether chartered by the laws of the State or any other State, are in an unsound condition, to require of said company or association a special statement of its affairs, and if said Commissioner shall not be satisfied that the affairs of said company or association are in a safe condition, or if any three stockholders or policyholders of such company or association shall make affidavit that they believe special statement or any annual statement to be incorrect or untrue, setting forth in what respect and on what grounds they believe the same to be untrue, then the said Commissioner shall make a personal examination of the affairs of said company and cause one to be made by some disinterested person or persons, specially appointed by him for that purpose, and he or they shall have power to examine under oath, the officers or agents of any company in relation to the business of said com-

pany; and it shall be the duty of the officers and agents of any Life Insurance Company or association doing business in the State to cause their books to be opened for such inspection or examination, as may be necessary, and if it shall appear that the affairs of such company are in an unsound condition, the Commissioner shall revoke the certificate of authority granted to such company, and cause a notice to be published of such revocation, at least three times, in some newspaper in the city of Nashville, and the agent or agents of such company or association, after such notice, are required to discontinue the issuing of any new policies, or the collection of any premiums.

SEC. 10. *Be it further enacted*, That every company doing a Life Insurance business in Tennessee, whether chartered by the laws of Tennessee, or of any other State or foreign country, shall be required for the better protection of policyholders, to keep at all times, in addition to the sum necessary to reinsure all outstanding risks, calculated upon the American Experience Table of Mortality at four and a quarter per cent. on mutual or participating policies, and at six per cent. on stock or non-participating policies, the sum of one hundred thousand dollars invested in bonds, securities or mortgages (if mortgages on real estate with double the sum loaned), to be certified as safe and worth this amount by the Insurance Commissioner of the State in which the company was organized.

SEC. 11. *Be it further enacted*, That whenever the Insurance Commissioner shall become satisfied by examination or otherwise, that the standard of solvency set forth in Section 10 of this act has become impaired, it shall be his duty to suspend the company, whether home or foreign, from the transaction of any new business until said impairment has been made good, and if such impairment exists in the case of a foreign company, for six (6) months from date of first examination, then the exclusion of the company shall be final; if in case of a company organized under the laws of Tennessee, then it shall be the duty of the Insurance Commissioner to file a bill in some court of equity jurisdiction in the State, against said company, its stockholders, policyholders and creditors generally, for the purpose of winding up the affairs of such company, or of affording such protection to the interest of all as in the opinion of the court the circumstances demand.

SEC. 12. *Be it further enacted*, That any such company or association desiring to transact any such aforesaid business, by any agent or agents in this State, shall file with the Insurance Commissioner a power of attorney, authorizing the Secretary of State aforesaid to

acknowledge service of process for and in behalf of such company, at any and all times after a company has once complied with the laws of Tennessee, and been regularly admitted, even though such company may subsequently have retired from the State, or been excluded, and it is hereby made the duty of the said Secretary of State, within five days after such service of process, by any claimant, to forward by mail an exact copy of such notice to the company.

SEC. 13. *Be it further enacted*, That the Insurance Commissioner shall cause to be prepared and furnished to every company and association to which this act shall apply, printed forms of the statement herein required, and he may make such change from time to time, and in the statement required, as shall seem to him best adapted to elicit from said companies or associations a true exhibit of their condition.

SEC. 14. *Be it further enacted*, That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed: *Provided*, that nothing contained in this act, shall be so construed as to prevent the repeal or amendment of the same, or any Section thereof, by the present or any future General Assembly of this State.

SEC. 15. *Be it further enacted*, That this act take effect and be in force from and after its passage, the public welfare requiring it.

Passed March 18, 1875.

LEWIS BOND,
Speaker of the House of Representatives.
THOMAS H. PAINE,
Speaker of the Senate.

Approved March 22, 1875.

JAMES D. PORTER,
Governor.